



Loyola Law School
Loyola Marymount University
Los Angeles

VRA Litigation

Prof. Justin Levitt
November 18, 2020

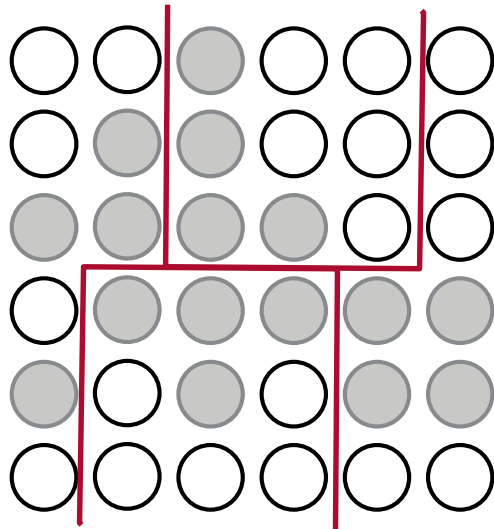
A refresher



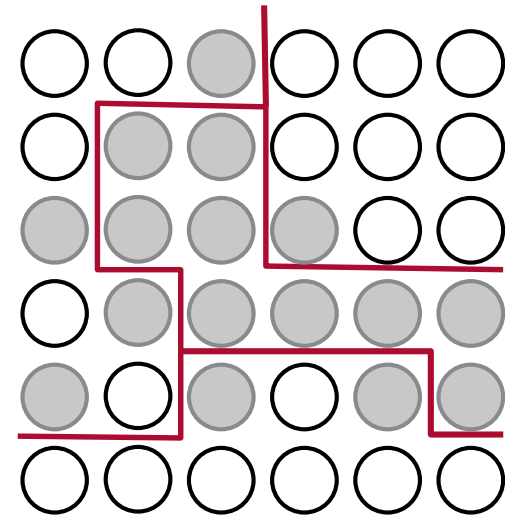
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Rule One

Don't set out to hurt voters based on their race or ethnicity



“Cracking”



“Packing”

- No matter if lines are “pretty”
- No matter the ultimate motive



Rule Two

Comply with the Voting Rights Act

- Are there sizable, relatively concentrated minority communities?
- Do the minority communities have distinct electoral preferences?
- Did (or do) underrepresented minorities face discrimination?

- Can we design districts to give minorities a fair shot?



Rule Three

Consider other factors at the same time

Race can only “predominate” if there’s a really good reason

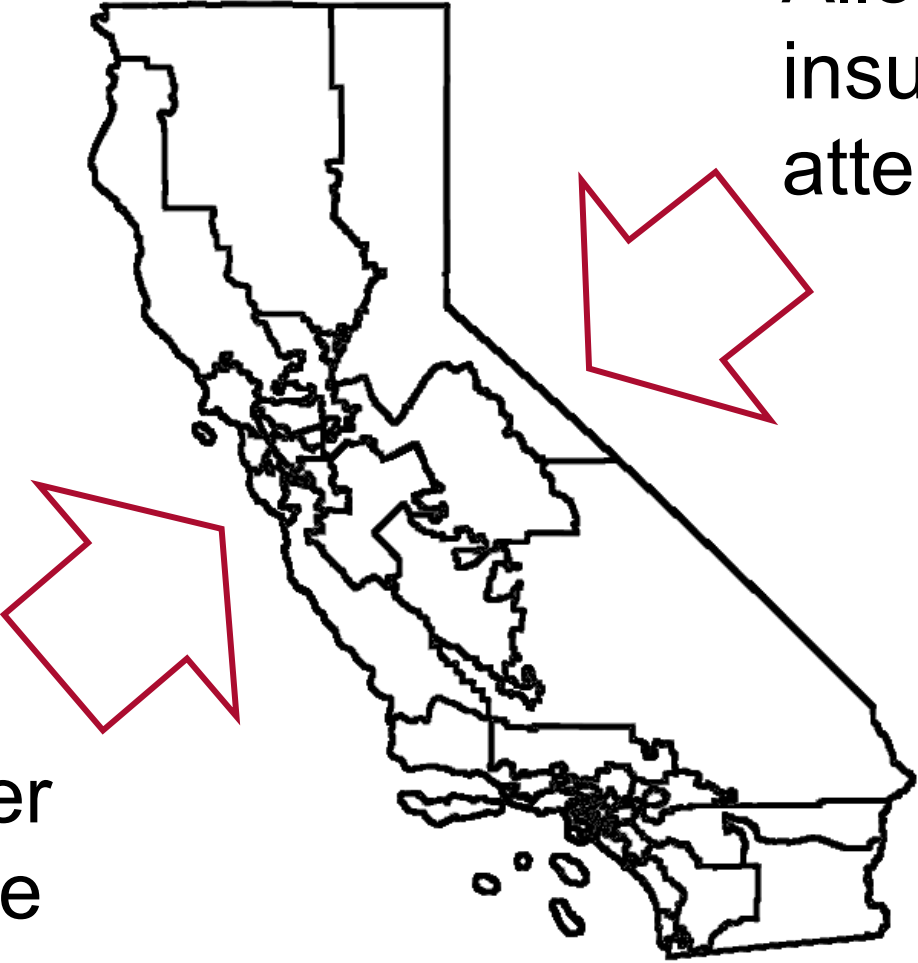


The shape of litigation



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Allegation of insufficient attention to race



Allegation of improper use of race



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Avoiding the improper use of race

- It's fine to consider race and ethnicity
- Don't set out to overpack
- Don't set out to divide / splinter
- Consider factors in addition to race / ethnicity (and explain those other factors)
 - Communities of interest
 - City / county / neighborhood boundaries
 - Compactness (based on population)



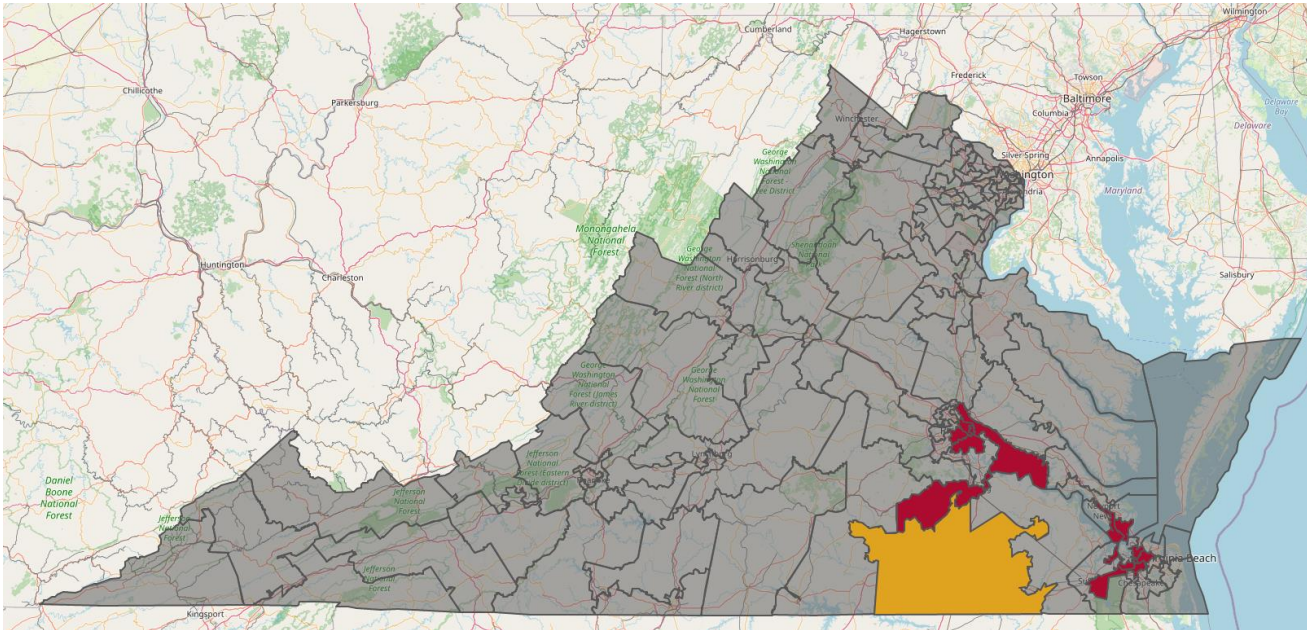
Avoiding insufficient attention to race

- Are local minority groups large enough to be > 50% “CVAP” (separately or together)
- Do local minority groups have distinct political preferences (separately or together, primaries or general elections)
- Is there a history of discrimination with lingering effects?
- Do minority groups have a meaningful opportunity in a proportional number of districts?
- What would it take for the local minority groups to have meaningful opportunities to elect candidates of their choice?



Bethune-Hill v. Va. State Bd. of Elections (2017)

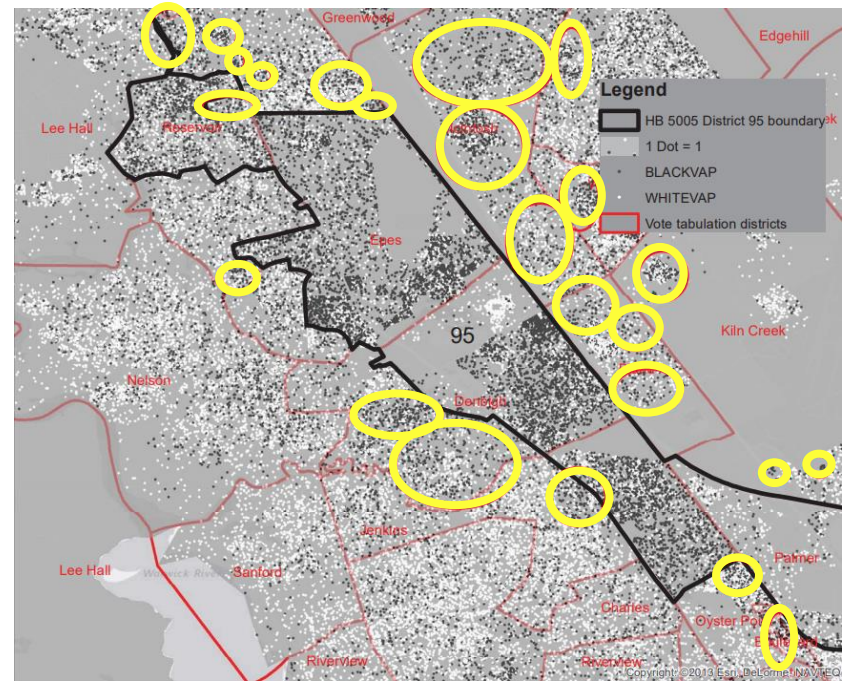
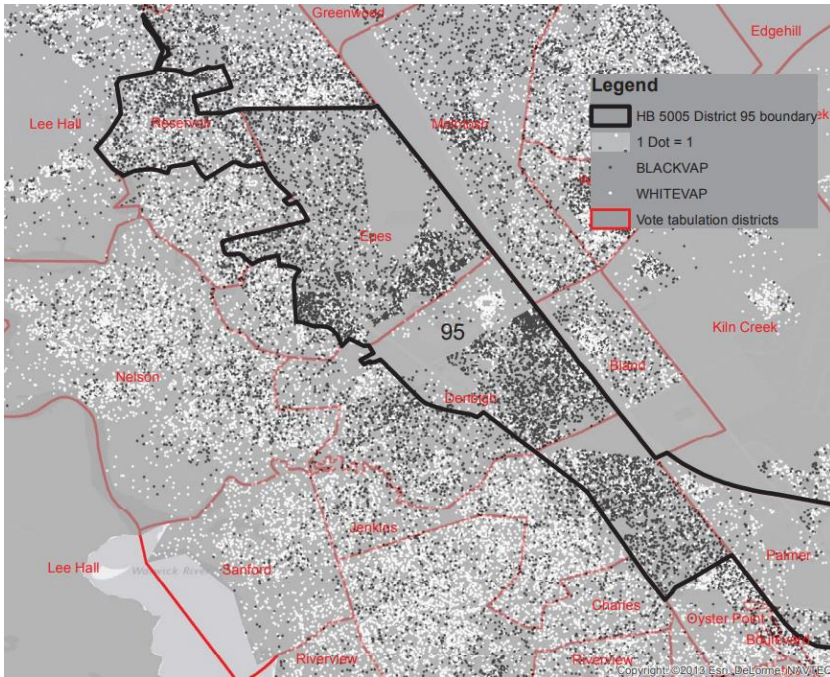
The wrong approach



Dist.	BVAP%
63	59.5%
69	55.2%
70	56.4%
71	55.3%
74	57.2%
75	55.4%
77	58.8%
80	56.3%
89	55.5%
90	56.6%
92	60.7%
95	60.0%

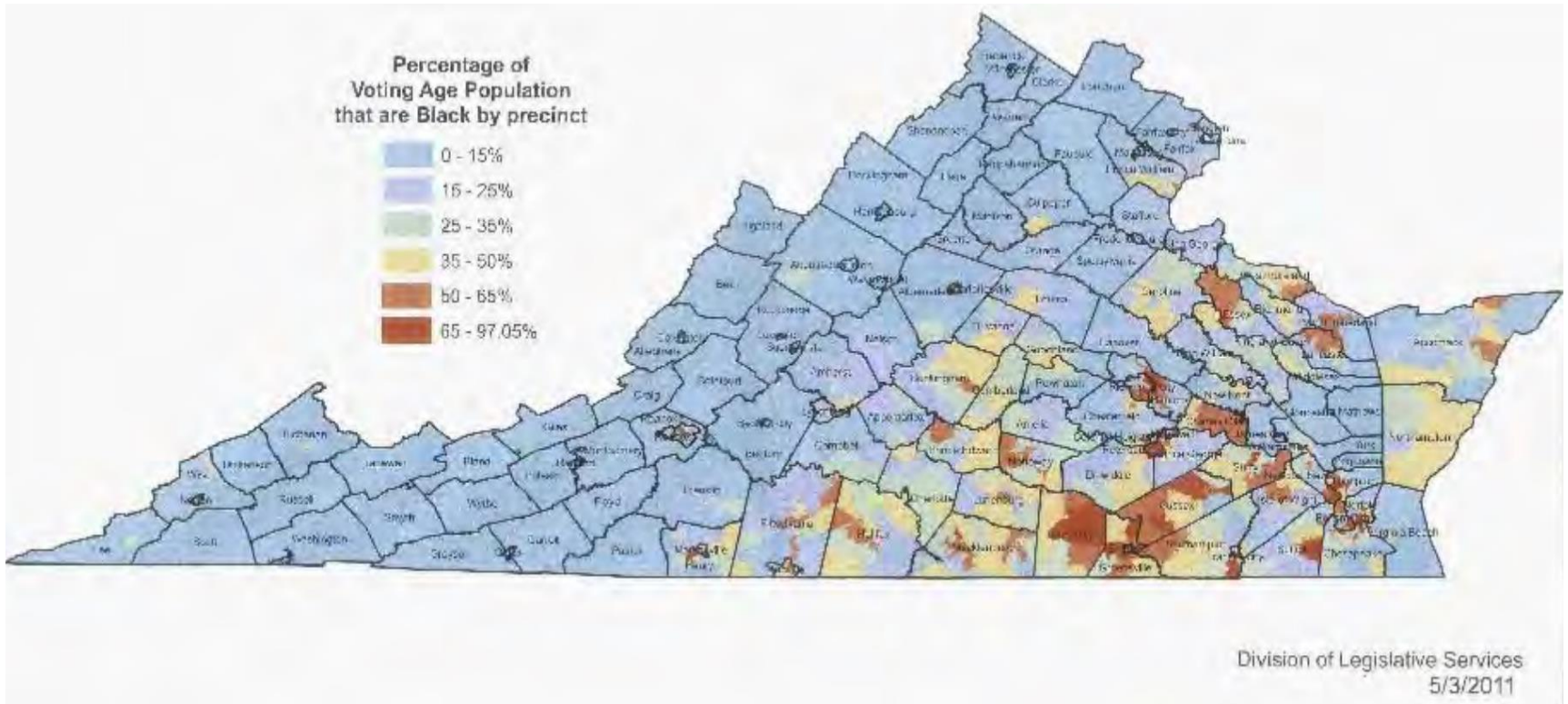
Bethune-Hill v. Va. State Bd. of Elections (2017)

The wrong approach



Bethune-Hill v. Va. State Bd. of Elections (2017)

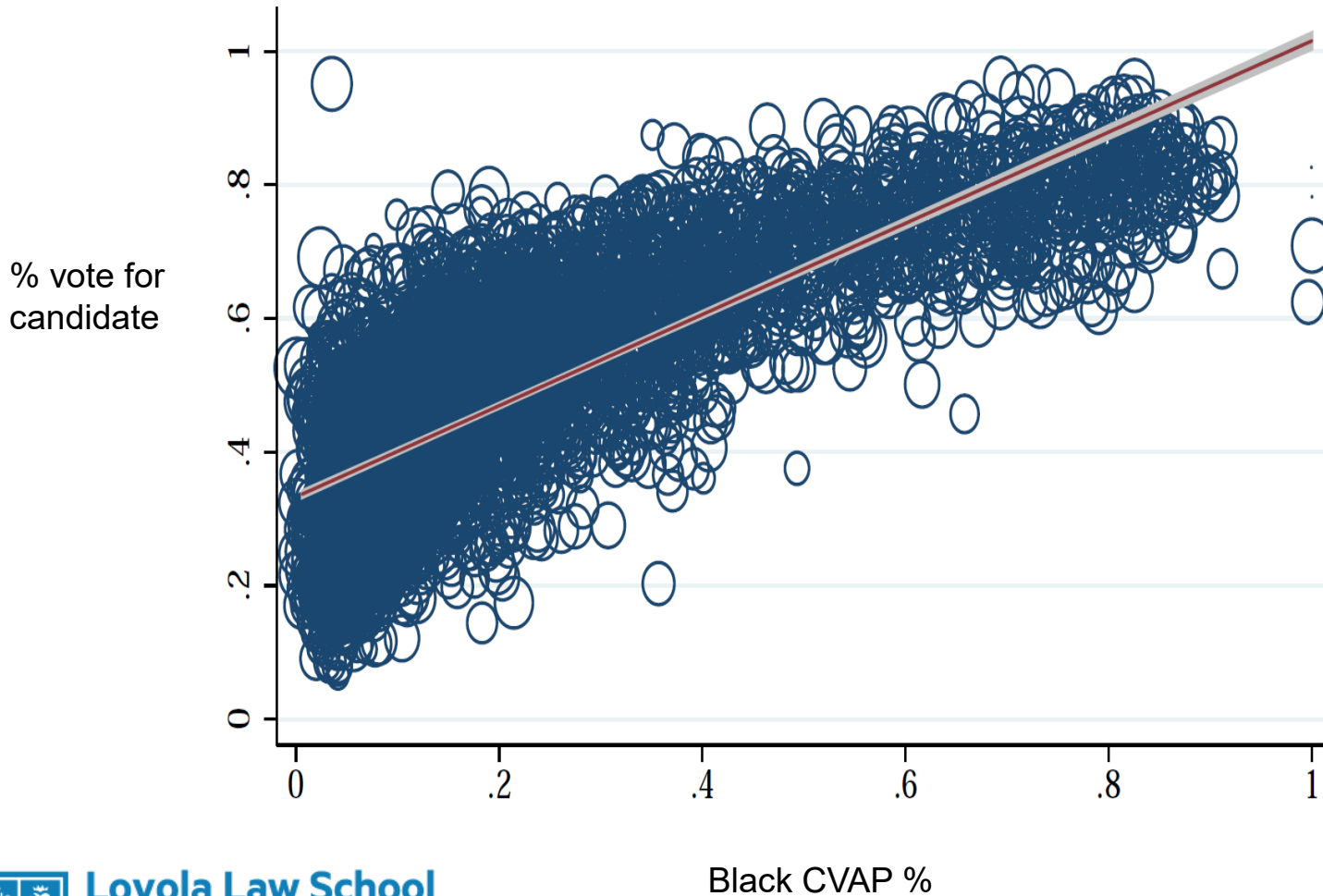
The right approach



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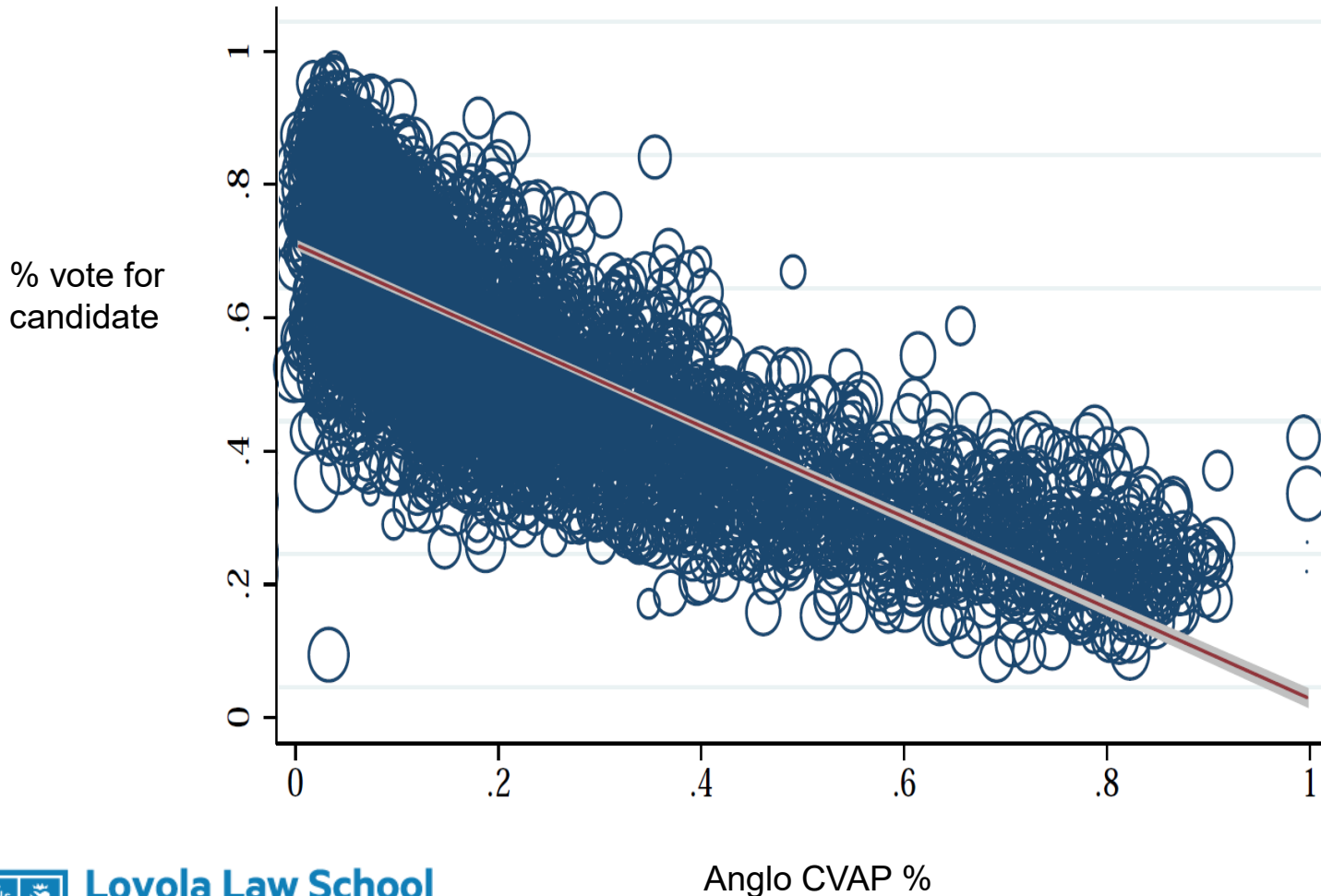
Bethune-Hill v. Va. State Bd. of Elections (2017)

The right approach



Bethune-Hill v. Va. State Bd. of Elections (2017)

The right approach



The right approach

- Is there a history of discrimination?
- Do minority groups already have proportional opportunity?
- What's the appropriate local minority concentration that gives a reliable practical opportunity to elect?
(doesn't have to be exact, but has to have "strong basis")
- Consider other factors too!
 - Communities of interest
 - City / county / neighborhood boundaries
 - Compactness (based on population)



Early and often – it's iterative

- Start early with data
- Give time to consider blocs of multiple minority groups
- Give time to try different combinations



Further information

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allaboutredistricting.org



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